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**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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Application of the Portage County Drainage  
District for a Permit to Abandon and Remove Nine  
Dams on Drainage Ditches in the Town of Grant,  
Town of Pine Grove, Town of Buena Vista and  
Town of Plover, Wisconsin

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Case No. 3-NC-96-2081

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT**

The Portage County Drainage District applied to the Department of Natural Resources for a permit to abandon and remove nine dams within the Portage County Drainage District. The Department of Natural Resources issued a Notice of Proposed Dam Abandonment which stated that unless written objection was made within thirty days after publication, the Department might issue a decision on the permit without a hearing. Timely objections to the permit applications were filed.

On February 26, 1998, the Department of Natural Resources filed a Request for Hearing with the Division of Hearings and Appeals. Pursuant to the due notice a hearing was held on April 2, 1998, in Wisconsin Rapids, Wisconsin, before Mark J. Kaiser, Administrative Law Judge (ALJ). The parties filed written argument after the hearing. The last submittal was received on April 15, 1998.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Portage County Drainage District, applicant, by

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Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh,  
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Wood County, objector, by

Peter A. Kastenholz, Corporation Counsel  
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P. O. Box 8095  
Wisconsin Rapids, WI 54495-8095

Gerald Timm, objector  
11440 County WA  
Wisconsin Rapids, WI 54494

#### Applicable Law

Section 88.31(4), Stats., provides:

Upon the conclusion of the hearing and investigation, the department of natural resources shall grant the permit if it finds:

(a) That the public health and welfare will be promoted by the proposed removal of the dam or other obstructions or by the proposed straightening, cleaning out, deepening or widening of such waters; and

(b) That the proposed work is necessary to the proper operation of the proposed drainage system; and

(c) That the proposed work will not materially impair the navigability of any such waters and will not materially impair any other public right in or public uses of such waters. The enjoyment of natural scenic beauty is declared to be a public right to be considered along with other public rights.

#### FINDINGS OF FACT

1. The Portage County Drainage District (PCDD) maintains and operates a network of drainage ditches and dams in southeastern Portage County. The purpose of the PCDD is to drain farmland and provide water for agricultural purposes. The network includes seven main drainage ditches and 55 dams. The ditches were dug during the period from 1909 to 1913 and the dams were constructed during the 1930s. The PCDD was established by court order (Ex. 18) dated February 3, 1905. The court order also described the location, depth, width and slide slopes for the drainage ditches to be constructed.

2. On November 7, 1996, the PCDD filed a series of applications to abandon nine of the dams. Specifically, the PCDD is seeking a permit to abandon Dams Nos. 4 and 7 located on Ditch No. 2, Dams No. 18, 20, 21, 22 and 49 located on Ditch No. 4, and Dams No. 38 and 40 located on Ditch No. 6.

The legal descriptions of the sites of the subject dams are the SE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of Section 18, T22N, R08E, Town of Plover (Dam No. 2); the SE  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of Section 14, T22N, R08E, Town of Plover (Dam No. 7); the NE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of Section 35, T22N, R07E Town of Grant (Dam No. 18); the SE  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of Section 32, T22N, R08E of the Town of Buena Vista (Dam No. 20); the SE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  of Section 33, T22N, R08E, Town of Buena Vista (Dam No. 21); the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 35 in T22N, R08E, Town of Buena Vista (Dam No. 22); the NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  of Section 23, T21N, R07E, Town of Grant (Dam No. 38); the NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$  of Section 20, T21N, R08E, Town of Pine Grove (Dam No. 40); the SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of Section 31, T22N, R08E, Town of Buena Vista (Dam No. 49). All the preceding descriptions are in Portage County.

3. The Department and the PCDD have fulfilled all the procedural requirements of sec. 88.31, Stats., and notice of the hearing was given to all persons specified in sec. 88.05(4)(b), Stats.

4. In general, the PCDD is seeking to abandon the subject dams because the dams have become superfluous and it seeks removal to avoid the expense of maintaining the dams. The dams have become superfluous because other water and grade control devices, such as culverts, have been constructed near the dams. With the exception of dam No. 38, the PCDD does not intend to remove any of the dams immediately. Rather the PCDD intends to remove the dams as part of other projects, such as dredging or, as the condition of the dams deteriorates, as an alternative to repairing them. Any specific reasons the PCDD seeks to abandon a particular dam will be set forth below.

#### Ditch No. 2

5. Dams No 4 and 7 are located in Ditch No. 2. Ditch No. 2 runs generally in an east-west direction. It is connected to Buena Vista Creek. Ditch No. 2 is a navigable waterway. Ditch No. 2 is a class I trout stream with a naturally reproducing population of brook trout. The ditch is also used by small mammals, birds, waterfowl, furbearers, reptiles and amphibians.

6. Dam No. 4 is a concrete structure located approximately  $\frac{1}{2}$  mile north of Buena Vista Drive and one mile east of Town Line Road. According to the application, the PCDD seeks removal of Dam No. 4 "[t]o minimize erosion by providing a more uniform gradient of the slope of the ditch bottom and to eliminate the restriction (dam) in the ditch especially during periods of high water flow." At the hearing Ed Wade, chairman of the PCDD, testified that the state owns the land on both sides of Ditch No. 2 at the site of dam No. 4. The state has proposed placing a road crossing with culverts at the approximate location of dam No. 4. The culverts will then establish the ditch grade at this site in lieu of Dam No. 4.

7. Additionally, two other dams, Dams Nos. 3 and 46, are located in Ditch No. 2 a short distance downstream from dam No. 4. Even after the removal of Dam No. 4, two controlling structures will remain in Ditch No. 2, before it enters the "natural part" Buena Vista Creek. Accordingly, the PCDD believes dam No. 4 is superfluous and seeks the removal of the dam to avoid the expense of maintaining an unnecessary dam. Dam No. 4 is also somewhat restrictive. During heavy water flows, the restriction may result in turbulence which will cause scouring and erosion.

8. Dam No. 7 is a concrete structure located immediately west of Isherwood Road. According to the application, the PCDD seeks removal of Dam No. 7 "[t]o provide better drainage of lands upstream and [reduce] the gradient of the slope of ditch bottom which will result in less erosion by lowering the velocity of the water flow." Ed Wade testified at the hearing that a road culvert was recently installed in place of the bridge on Isherwood Road. This culvert now controls the grade in Ditch No. 2 at this location.

The elevation of the culvert is 1064.79. The elevation of the sill of Dam No. 7 is 1067.04. Removing the dam will allow the PCDD to reduce the gradient of the bed of the ditch. Reducing the gradient of the ditch profile will slow the water velocity in the stream for this reach, which, in turn, will reduce erosion of the ditch banks. John Milligan, a consulting engineer for the PCDD, measured the water velocity through dam No. 7 at 3.1 feet per second (fps) and the velocity below the dam at 1.3 fps. With the dam removed and the profile of the ditch bottom flattened, the water velocity was calculated as 0.92 fps (exh. 10).

#### Ditch No. 4

9. Dams Nos. 18, 20, 21, 22, and 49 are located on Ditch No. 4. Ditch No. 4 runs in an approximately east-west direction. Ditch No. 4 is also identified as Four Mile Creek on maps. Ditch No. 4 is a class I trout stream with a naturally reproducing population of brook trout. The ditch is also used by small mammals, birds, waterfowl, furbearers, reptiles and amphibians.

10. Dam No. 18 is a concrete structure and located approximately  $\frac{1}{4}$  mile northeast of the intersection of County Trunk Highway (CTH) "W" and CTH "F." According to the application, the PCDD seeks removal of dam No. 18 "[t]o minimize erosion by providing a more uniform gradient of the ditch bottom. The sill of the dam is also too high, reducing velocity of water flow upstream causing the stream to freeze up in the winter when water flow is minimal."

Dam No. 18 is no longer used by the PCDD to control water levels in Ditch No. 4. Three other water control structures, Dams Nos. 55, 57, and 58, are located downstream from Dam No. 18 and have rendered Dam No. 18 superfluous as a water control structure. The elevation of the sill of Dam No. 18 is also too high with respect to the other nearby grade control structures. Removal of the dam will allow the PCDD to reduce the gradient of the ditch profile in this stretch which will reduce the water velocity in the ditch and, in turn, decrease erosion of the ditch banks.

11. Dam No. 20 is a concrete structure located adjacent to CTH "W" and  $\frac{1}{2}$  mile east of CTH "UU." According to the application, the PCDD seeks removal of Dam No. 20 "[t]o

provide a more uniform gradient in the ditch bottom slope to promote more uniform flow which will minimize erosion and provide better drainage." The PCDD is planning to maintain the sill of the dam as grade control structure.<sup>1</sup>

12. Dam No. 21 is a concrete structure located adjacent to CTH "W" and ½ block west of Taft Avenue. According to the application, the PCDD seeks removal of Dam No. 21 "[t]o minimize the erosion of the ditch bottom as water is flowing under the sill of the dam. The sill is also too high and is restricting drainage of lands upstream." Water is flowing beneath Dam No. 21 which is causing erosion at the site. The PCDD would prefer to remove the dam rather than incur the cost of repairing it. Additionally, a new culvert has been installed approximately 75 feet downstream of Dam No. 21. This culvert acts as a grade control structure at this location.

13. Dam No. 22 is located approximately ¼ mile east of State Highway 51. According to the application, the PCDD seeks removal of Dam No. 22 "[t]o provide better drainage of lands upstream as the sill of the dam is too high and to reduce the erosion which is occurring below the dam as it is restricting water flow." Dam No. 22 is holding some water back. Removal of this dam will improve drainage for upstream property owners.

14. Dam No. 49 is located adjacent to CTH "W" and is part of the structure of a bridge on Town Line Road that spans Ditch No. 4. According to the application, the PCDD seeks removal of Dam No. 49 "[t]o officially abandon the dam which is part of the concrete road culvert as the concrete structure is deteriorating and will be replaced with a steel culvert in the future." The PCDD is seeking a permit to abandon this dam at this time to avoid any delays when the county is ready to replace the culvert.

#### Ditch No. 6

15. Dams Nos. 38 and 40 are located on Ditch No. 6. Ditch No. 6 runs generally in an east-west direction. Ditch No. 6 is a navigable waterway which flows into Ten Mile Creek. Ditch No. 6 is identified as the South Branch of Ten-Mile on maps. Ditch No. 6 is a class I trout stream with a naturally reproducing population of brook trout. The ditch is also used by small mammals, birds, waterfowl, furbearers, reptiles and amphibians.

16. Dam No. 38 is a concrete structure located adjacent to Tower Road approximately ¾ mile east of CTH "F." According to the application, the PCDD seeks removal of Dam No. 38 "[t]o minimize erosion of the stream bed as the water is flowing around and under the dam."

17. Dam No. 40 is located adjacent to Tower Road, approximately one mile east of CTH "UU." According to the application, the PCDD seeks removal of Dam No. 40 "[t]o minimize erosion by removing the structure which restricts the flow during heavy water flow."

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<sup>1</sup> The fact that the PCDD is planning to maintain the sill of dam No. 20 as a grade control structure is apparently either a change in the district's proposal or was not communicated to Lampert, Lee & Associates, the PCDD's consulting engineers. The profile of Ditch No. 4 on exh. 5 shows a proposed ditch profile approximately 1.5 feet below the elevation of the sill of dam No. 20.

### Objections to Dam Removals

18. Gerald Timm filed an objection to the removal of Dams 18, 20, 21 and 22. Wood County initially objected to the removal of all nine dams. It subsequently withdrew its objection to the removal of Dams 38 and 40. It continues to object to the removal of Dams 4, 7, 18, 20, 21, 22 and 49.

19. Ditch Nos. 2 and 4 join Four Mile Creek which eventually flows into Lake Wazeecha in Wood County. Wood County is concerned about the impact that the dam removals on these two ditches will have on sedimentation in Lake Wazeecha. The evidence in the record is that the dam removals will result in less sediment being carried by the water in these two ditches. However, studies have indicated that the sedimentation which is being deposited in Lake Wazeecha is not coming from the drainage district but from the stretch of Four Mile Creek between the drainage district and Lake Wazeecha. Wood County is concerned that, as part of the project, the PCDD also plans to deepen the ditches. Deepening the ditches will result in more water being carried by the ditches and the potential for more erosion in Four Mile Creek.

Although the District is planning some dredging along with the removal of the sills of some of the dams, the goal of this project is not to enlarge the size of the ditches. A permit condition proposed by the Department and adopted as part of this order is that "[w]hen construction is completed, the stream bed contours at the project site must conform to the original profile established at that site." Compliance with this condition should mean that little or no additional volume water will flow from ditches No. 2 and 4 into Four Mile Creek and, consequently, no additional erosion as a result of the removal of the dams in those two ditches.

Additionally, the application is only for a permit to remove the dams, any dredging proposed by the PCDD will require a separate permit. The permit is expressly conditioned on conforming the ditch bed to the original profiles established for the respective sites or, alternatively, new profiles approved by the Department of Agriculture, Trade and Consumer Protection (DATCP). The permit conditions proposed by the Department, and adopted as part of this order, make it clear that the PCDD may not use this dam removal process to increase the size of these ditches. If the PCDD wishes to increase the size of the ditches, it must go through a separate process for approval.

20. Ditches Nos. 2, 4, and 8 come together on property owned by Gerald Timm. Mr. Timm is concerned about increased erosion of the ditch banks as a result of the proposed dam removals. As stated above one of the reasons the PCDD is seeking a permit to abandon these two dams is to minimize erosion. Upon compliance with the conditions included in the permit, the dam abandonment will not cause additional erosion of the ditch banks in this area.

21. Mr. Timm is particularly concerned about the removal of Dams Nos. 18 and 20. The PCDD proposed ditch plan and profile for Ditch No. 4 shows the ditch bottom lowered at the site of these dams after their removal. With respect to Dam No. 18, the reason for the proposed lowering of the ditch profile at this site is to reduce the gradient of the ditch bottom between the culvert beneath 130<sup>th</sup> Street and the culvert beneath CTH "F." The reduction of the gradient of the ditch bottom in this stretch will reduce the velocity of the water and reduce

erosion. However, assuming the sill of Dam No. 18 was set at the authorized elevation at the time the dam was constructed, this lowering does appear to constitute a deepening of the ditch at this site.

The steep gradient of the ditch bottom between the dam and the culvert beneath CTH "F" suggests that the culvert was set at an incorrect elevation. A permit condition proposed by the Department which is adopted as part of this order is that "[p]rior to removal of any dams, all road and driveway culverts within the project area shall be reestablished at an elevation that conforms to the original profiles.<sup>2</sup> With respect to Dam No. 20, presumably, the PCDD's statement that it intends to maintain the sill of Dam No. 20 as a grade control device, sufficiently addresses Mr. Timm's objections to the removal of this dam.

22. As mentioned above, the ditches are high quality trout streams and are used by small mammals, birds, waterfowl, furbearers, reptiles and amphibians. The Department staff do not expect, and the record contains no evidence, that the removal of any of the dams will have any negative impacts on wildlife resources. To the contrary, the Department witnesses testified that the removal of the dams will remove obstacles from the ditches which should marginally improve the ditches as fish and wildlife habitat.

23. Drainage ditches generally operate more effectively without dams. Removal of the subject dams will also cut down on the maintenance costs of the drainage system. The PCDD provided an estimate that the cost of replacing or extensively repairing an existing dam is \$60,000. For these reasons the removal of the subject dams is necessary for proper operation of the drainage system upon compliance with the conditions of the permit.

24. The removal of the subject dams will reduce erosion in the ditches which will improve the water quality in the system. For this reason the public health and welfare will be promoted by the removal of the subject dams upon compliance with the conditions of the permit.

25. The proposed abandonment of the nine dams which are the subject of this hearing will not materially impair the navigability of the affected waterways and will not materially impair any public right in or public use of such waters upon compliance with the conditions of the permit.

27. The proposed abandonment of the nine dams which are the subject of this hearing will not detract from the natural scenic beauty of the areas adjacent to or near the drainage ditches upon compliance with the conditions of the permit.

28. The proposed abandonment of the nine dams which are the subject of this hearing will not adversely affect water quality nor increase water pollution as defined at sec. 299.01(4), Stats., upon compliance with the conditions of the permit.

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<sup>2</sup> The PCDD objected to this condition because of the undue expense. However, this is necessary to ensure that the dam removal project does not become a ditch enlargement project. This condition ensures that no portion of any of the three ditches involved is dredged deeper than authorized because the PCDD is attempting to reduce the grade of a ditch bottom to an improperly set culvert. No estimate of the cost of reestablishing the elevation of the culverts was provided, but presumably the only impact of this condition will be to increase the length of time until the PCDD actually removes the subject dams.

29. The Department of Natural Resources has complied with the procedural requirements of sec 1.11, Stats., and Ch. NR 150, Wis. Adm. Code, regarding assessment of environmental impact.

#### Discussion

The consensus of the expert testimony at the hearing is that in general drainage ditches work better without dams. For example, David Jelinski, a professional engineer with the DATCP, testified that DATCP's position is "that the placement of dams in drainage ditches has a negative impact on agricultural production and water quality by raising the water table, slowing the runoff of water from agricultural lands, raising the water temperature in the impoundment, injuring drainage ditch banks, and generally defeating the purpose of drainage. The negative water quality impacts are caused by increased water velocities in the ditch, and water turbulence at the dam sill. These conditions create the potential for sediment transport into and from the ditch system." Accordingly, without a specific need for a dam the public welfare is better served by the removal of the subject dams. The uncontroverted testimony at the hearing is that only one of the nine dams proposed to be abandoned has been operated in the last several years.

The objectors in this case are opposed to the removal of the dams, not because of a need for any of the dams as water control structures, but because the sills of the dams act as grade control structures for the ditches. The objectors are concerned that the removal of the dam structures will result in deeper ditches which will result in a greater volume of water in the ditches and in a steeper gradient of the ditch bottoms which will result in an increase in the velocity of the water in the ditches. These conditions will result in increased erosion. One of the stated reasons for the proposed dam abandonments is to decrease the velocity of the water in the ditches and thereby reduce erosion. Obviously the objectors disagree with the applicant's predictions of the effect of the dam abandonments on water velocity in the ditches and erosion; however, based on the projected stream profiles, the ditch gradients will be reduced. The reduction in the ditch gradients should result in reduced water velocity and consequently less erosion.

More importantly, it must be kept in mind that at this stage the PCDD is only seeking a permit to abandon the dams. The permit is conditioned on the applicant obtaining approval of new stream profiles from the DATCP. There will be an opportunity for public input before the DATCP approves the stream profiles. Similarly, the applicant has indicated that it intends to perform the actual dam removals in conjunction with planned maintenance dredging of the ditches. Since the ditches are navigable, the PCDD will need a dredging permit from the Department prior to commencing any dredging. The concerns raised by the objectors are more appropriately raised in conjunction with the process of obtaining approval of the ditch profiles and dredging, the activities which will directly impact the depth and grade of the ditch beds.

Additionally, the permit requires the PCDD to reestablish all road and driveway culverts within the project area to an elevation that conforms to the original stream profiles. And, finally, sec. 88.31(5), Stats., requires the Department establish minimum water levels when a dam



abandonment permit is granted. These requirements will further ensure that the ditches are not deepened in conjunction with the dam removals.

### CONCLUSIONS OF LAW

1. The PCDD is a lawfully established drainage board under chapter 88, Stats.
2. The proposed dam removals are type III actions pursuant to sec. NR 150.03(5)(f)13., Wis. Adm. Code. Pursuant to sec. NR 150.20(1)(b)3, Wis. Adm. Code, a type III action does not require the preparation of an Environmental Assessment or Environmental Impact Statement.
3. The Division of Hearings and Appeals has authority under secs. 227.43(1)(b), and 88.31(3), Stats., and in accordance with the foregoing Findings of Fact, to grant the following permit to abandon the nine dams described in the Findings of Fact, subject to the conditions contained therein.

### PERMIT

AND HEREBY THERE DOES ISSUE AND IS GRANTED to the applicant a permit to abandon the above-described nine dams subject to the following conditions. Failure to comply with these conditions renders the permit null and void.

1. This permit expires on August 15, 2001 if the project is not completed before then, unless the applicant requests and obtains an extension of the permit expiration date in writing from the Department prior to the expiration date. No construction may begin or continue after the permit expires.
2. Any dam removal must be completed between June 15<sup>th</sup> and August 15<sup>th</sup> of any year while the permit is valid, to help protect trout habitat and stabilize streambanks disturbed by construction activities.
3. You must complete this project according to the plans you submitted. If you wish to make changes in the project you must submit your new plans to the Department. The Department then must approve the changes in writing before you start or continue your project.
4. You are responsible for obtaining any permit or approval required for your project by municipal, town or county zoning ordinances, or by the U.S. Army Corps of Engineers before starting your project.
5. You must obtain written approval from the Department of Agriculture, Trade and Consumer Protection pursuant to ss. ATCP 48.34 and 48.36, Wis. Adm. Code, before beginning removal of any dam regulated by this permit.
6. You must allow free and unlimited access to your project site at any time to any Department employee who is investigating the project's construction, operation or maintenance.

7. The Department may change or revoke this permit if it determines during the course of the project that the project will obstruct navigation or be detrimental to the public interest.

8. Your accepting this permit and beginning the project means that you have read, understand and agree to follow all conditions of this permit.

9. You must create a new permanent benchmark set by a registered professional surveyor and reference it to existing benchmark datum at each removal site in a visible and verifiable location to replace the existing benchmarks that are located on these existing dams. You must record the dam sill elevation from the new benchmark before the sill can be removed. You must send a copy of the above information to Peter B. Wolter, Water Management Specialist, 473 Griffith Avenue, Wisconsin Rapids, Wisconsin, 54494.

10. The sills of the dams may not be removed until the new proposed stream profiles are approved by the Department of Agriculture, Trade and Consumer Protection.

11. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be bought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat. This permit may be rescinded or revoked if the Department determines that the conditions of this permit have not been followed or if it finds the activity to be detrimental to the public interest.

12. Prior to beginning removal of any dam, you must submit a plan to the Water Management Specialist that describes how you will minimize and control sedimentation to downstream areas. This plan will also need to be approved by the Department prior to any dam removal.

13. Prior to removal of any dams, all road and driveway culverts within the project area shall be reestablished at an elevation that conforms to the original profiles and all culverts shall be properly sized.

14. The applicant shall perform the removal under the direction of the Department if it becomes necessary to protect the navigable waters involved.

15. You must remove from the stream any concrete or other materials that are approved to be removed and that are a structural part of the dam. Sills must remain until the new stream profiles are approved by the Department of Agriculture, Trade and Consumer Protection, pursuant to condition #10 of this permit.

16. You may not deposit or store any materials upon any part of the bed of the waterway below the ordinary highwater mark or in any wetland area.

17. When construction is complete, the stream bed contours at the project site must conform to the original profile established at that site.

18. You must immediately seed and mulch, place erosion matting or rock riprap any area where topsoil is exposed during construction to prevent soil from being eroded and washed into the waterway or wetland. Erosion control devices must meet or exceed the specifications described in Wisconsin's Best Management Practices for Construction Site Erosion Control.

19. The Department reserves the right under this permit to establish the minimum level of water of the stream that is affected by this permit, pursuant to sec 88.31(5), Stats.

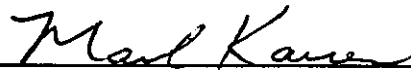
20. You must notify the DNR Water Management Specialist, Wisconsin Rapids Office, at least five working days before beginning each dam removal and within three working days after completing each dam removal.

21. This permit governs dam removal only. You must obtain a permit from the Department under sec. 88.31, Stats., for any dredging that would be completed in association with the dam removal, unless a new dredging agreement between the Department and the PCDD is in effect before and during the time that dredging occurs.

Dated at Madison, Wisconsin on July 8, 1998.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
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By



MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.